

Letter of Findings: 09-0682
Gross Retail Tax
For 2005 through 2007

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ISSUES

I. Credit for Taxes Paid – Gross Retail Tax.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-3-2; IC § 6-2.5-3-5; IC § 6-2.5-4-1; IC § 6-8.1-5-1(c); [45 IAC 2.2-3-16](#).

Taxpayer argues that it is not subject to use tax on computers and computer equipment purchased in Texas and sent to its Indiana retail locations.

II. Improvements to Realty – Gross Retail Tax.

Authority: IC § 6-2.5-4-9; IC § 6-2.5-4-9 (b); IC § 6-8.1-5-1(c); [45 IAC 2.2-3-4](#).

Taxpayer maintains that it is not required to pay use tax on certain items labeled as "store equipment" because the items were actually leasehold improvements.

STATEMENT OF FACTS

Taxpayer provides retail financial services by operating check cashing stores throughout the United States. In addition to these check cashing services, Taxpayer provides short term loans, sells money orders, and wire transfers bill payments. Taxpayer is headquartered in Texas but has retail locations in Indiana.

The Indiana Department of Revenue (Department) conducted an audit review of Taxpayer's sales tax records. The Department found that Taxpayer owed additional use tax and issued an assessment for that amount. Taxpayer disagreed with a portion of that assessment and submitted a protest to that effect. This Letter of Findings results.

I. Credit for Taxes Paid – Gross Retail Tax.

DISCUSSION

Taxpayer purchased computers and computer equipment. Taxpayer purchased those items at an out-of-state location and shipped them to Taxpayer's retail locations located within Indiana. The Department's audit concluded that the items were subject to Indiana use tax.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. Retail transactions generally involve the transfer of tangible personal property. IC § 6-2.5-4-1. A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

However, Indiana law allows a credit for payment of taxes paid to another taxing jurisdiction at the time of the original out-of-state purchase. That credit is found at IC § 6-2.5-3-5 which provides in relevant part, "A person is entitled to a credit against the use tax imposed on the use storage, or consumption of a particular item of tangible personal property equal to the amount, if any, of sales tax, purchase tax, or use tax paid to another state, territory, or possession of the United States for the acquisition of that property." See also [45 IAC 2.2-3-16](#).

Taxpayer maintains that it purchased computers and computer equipment at its out-of-state Texas headquarters, paid sales tax to that jurisdiction, and then shipped the items into Indiana. As a threshold issue, it is the taxpayer's responsibility to establish that the tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made."

Taxpayer has provided documentation sufficient to establish that the various purchases of computers and computer related equipment were purchased outside Indiana and that sales tax was paid to the out-of-state tax jurisdiction. Therefore, under IC § 6-2.5-3-5 a credit for that previously paid sales tax should be allowed and the audit assessment adjusted accordingly.

FINDING

Taxpayer's protest is sustained.

II. Improvements to Realty – Gross Retail Tax.

DISCUSSION

The audit concluded that Taxpayer had purchased various items of "store equipment" for which use tax was due. Taxpayer objects to the consequent assessment arguing that items labeled as "store equipment" were actually "leasehold improvements." In its supplementary information, Taxpayer explains as follows:

Not a taxable item. Invoice for interior wall of store which is an inherent part of the real property. This is listed as leasehold improvements on our asset report. The auditor erroneously described them as store equipment.

As authority for that position, Taxpayer cites to [45 IAC 2.2-3-4](#) which states as follows:

Tangible personal property, purchased in Indiana, or elsewhere in a retail transaction, and stored, used, or otherwise consumed in Indiana is subject to Indiana use tax for such property, unless the Indiana state gross retail tax has been collected at the point of purchase.

Taxpayer is unclear as to this issue but – without saying as much – apparently relies on the exemption found at IC § 6-2.5-4-9 which states as follows:

(a) A person is a retail merchant making a retail transaction when the person sells tangible personal property which:

(1) is to be added to a structure or facility by the purchaser; and

(2) after its addition to the structure or facility, would become a part of the real estate on which the structure or facility is located.

(b) Notwithstanding subsection (a), a transaction described in subsection (a) is not a retail transaction, if the ultimate purchaser or recipient of the property to be added to the structure or facility would be exempt from the state gross retail and use taxes if that purchaser or recipient had directly purchased the property from the supplier for addition to the structure or facility. (Emphasis added).

[45 IAC 2.2-3-4](#) does not support Taxpayer's argument because there is no indication that items such as "new flooring" or "air conditioner" parts were purchased outside the state with sales tax paid at the time of the original acquisition. Instead, Taxpayer seems to argue that if it purchased materials, supplies, or parts which were then "integrated" into one of Taxpayer's business locations, the purchase is exempt. However, IC § 6-2.5-4-9 does not support Taxpayer's position unless the purchaser was entitled to a blanket exemption for sales tax as explained in IC § 6-2.5-4-9 (b).

Pursuant to IC § 6-8.1-5-1(c), Taxpayer has failed to meet its burden of demonstrating that the purchases of "store equipment" were exempt from tax.

FINDING

Taxpayer's protest is respectfully denied.

SUMMARY

On the issue of the "computers" and "computer equipment," Taxpayer's protest is sustained; during the supplementary audit, the amount of use tax assessed should be adjusted. On the remaining issues, Taxpayer's protest is denied.

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